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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Inquiry Concerning the Deployment of)
Advanced Telecommunications Capability to All)
Americans in a Reasonable and Timely Fashion,)
and Possible Steps to Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

CC Docket No. 98-146

REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. hereby submits its comments in reply to comments filed in the above-captioned inquiry into the status of the deployment of advanced capabilities.¹

I. INTRODUCTION AND SUMMARY

The record amply demonstrates that many competitors are actively deploying advanced capabilities and services, particularly in the interLATA market. However, the record also reflects, as MCI WorldCom asserted in its comments, that the pace of deployment would be greatly increased if the incumbent local exchange carriers (ILECs) would comply fully with their interconnection, unbundling, pricing, and resale obligations pursuant to section 251 of the Communications Act of 1934, as amended by Telecommunications Act of 1996 (1996 Act). The record is replete with evidence demonstrating how difficult it is for competitive local exchange carriers (CLECs) to obtain affordable, fast and efficient access to unbundled loops, equipment and collocation space. While the ILECs continue to announce further deployment of advanced capabilities and services -- despite

¹ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, FCC 98-187 (released August 7, 1998) (NOI)

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claims that they have no incentive to do so -- CLECs are unable to obtain access to unbundled loops and collocation space. The problem is not the lack of provision of advanced capabilities and services, but the lack of competitive provision of such capabilities and services.

Strict enforcement of section 251 is therefore necessary to prevent the ILECs from closing their networks to competition, which will allow them to control the terms, conditions and pace under which advanced capabilities will be deployed. The primary goal of the Act is to create a competitive marketplace for all services, including advanced services. The Commission Notice of Proposed Rulemaking has correctly proposed additional rule modifications that would facilitate CLECs' ability to access loops, collocate, and access other essential elements so that they can effectively compete with ILECs.² making additional action in this proceeding unnecessary at this time.

The commenters have also overwhelmingly demonstrated that there is no shortage of capacity in the interLATA backbone market. Current providers -- which include national interexchange carriers, rural incumbent local exchange carriers, and a variety of other companies that both own and lease interexchange capacity -- are able to acquire the necessary capacity to keep pace with demand. The record makes very clear that there is therefore no need for Bell Operating Company (BOC) deployment of an in-region, interLATA backbone to resolve any alleged congestion on the Internet.

II. STRICT ENFORCEMENT OF SECTION 251 AND THE COMMISSION'S ORDER ARE NECESSARY BECAUSE OF THE ILECS' BOTTLENECK CONTROL OVER ESSENTIAL FACILITIES

In its Order, the Commission correctly ruled that the interconnection, unbundling, pricing and resale requirements of section 251(c) apply to advanced telecommunications facilities and services

² See generally, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Dkt. No. 98-147, FCC 98-147 (rel. Aug. 7, 1998) (Order or NPRM).

offered by an ILEC.³ As the Commission recognized, section 251 is one of the cornerstones of the Act established to open local markets to competition.⁴ Nevertheless, the ILECs continue their attempts to evade their section 251 obligations with respect to the provision of advanced capabilities and service. The ILECs would have the Commission believe that, under the current regulatory scheme, they lack the incentive to further invest and deploy advanced technologies without the Commission's forbearance from regulation.⁵ Despite the ILECs' protestations that regulatory forbearance is needed to spur deployment, they have continued to announce further deployment of advanced capabilities and services.⁶ Even though CLECs cannot obtain xDSL-capable loops and collocation space necessary to provide advanced services, ILECs have proceeded with their deployment. The problem is not that advanced capabilities and services are not provided, but that ILEC intransigence has meant they are not being provided on a competitive basis.

ILEC compliance with the interconnection, pricing, unbundling and resale requirements of section 251 is therefore essential to permit competition to develop, especially for residential and small business customers. Once competition develops, the ILECs will be incented to deploy

³ Order, ¶ 46.

⁴ Id., ¶ 73.

⁵ In an attempt to divert attention from the issue before the Commission, the ILECs argued that the misclassification of Internet traffic as local, requires ILECs to pay reciprocal compensation, and also creates market disincentives for non-ILEC loop technologies. See Ameritech Comments at 10; Bell Atlantic Comments at 9-10. The ILECs' arguments are not germane to this proceeding. MCI WorldCom will address this issue more comprehensively in other Commission proceedings directly involving reciprocal compensation.

⁶ Bell Atlantic Press Release, "Bell Atlantic Introduces Infospeed DSL Service to the Washington, D.C. and Pittsburgh Markets, (October 5, 1998) (also announcing that ADSL will be expanded to additional communities throughout the fall and in 1999); Ameritech Press Release, "Ameritech Expands Data Offerings, Unveils Commercial ADSL," (October 5, 1998).

advanced capabilities faster and more broadly than they would if they are allowed to retain their monopolies. Indeed, proper implementation and enforcement of many of the Commission's proposals in its NPRM for CLEC access to loops and collocation space make additional Commission action in this proceeding unnecessary. Instead, these issues can be revisited in the future to ensure that proposed regulatory changes have been implemented

MCI WorldCom strongly believes, as do the majority of commenters,⁷ that full implementation and enforcement of section 251 requirements present the best approaches to promoting local competition, which will in turn ensure widespread deployment of advanced capabilities and services. Most commenters assert -- and we agree -- that the threat of competition, and not regulatory forbearance, will spur ILECs to deploy advanced capabilities and services. Indeed, the BOCs' section 706 petitions were filed in response to the perceived threat of competition from other providers.⁸ As e.spire noted, the efforts of competitors to deploy advanced capabilities and services spurred incumbents to make investments because they feared the effect of competition, which was beginning in urban and suburban markets. In the end, local competition is what will spur innovation and widespread deployment of advanced capabilities and services.

In their efforts to justify forbearance, the ILECs attempt to depict a competitive "advanced services market" to which section 251 should not apply. The ILECs attempt, in an unconvincing

⁷ See e.g., e.spire Comments at 8; Sprint Comments at 3; Comments of the Telecommunications Resellers Association at 8; Comments of AT&T Corp. at 43; Comments of Qwest Communications Corporation at 23.

⁸ See e.g., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service, CC Docket No. 98-91 at 11-17 (filed June 9, 1998); Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11 at 21 (filed January 26, 1998).

fashion, to create a distinction between voice and advanced data services to evade their obligations under section 251. Simply put, there is no distinction between the regulatory treatment of voice and advanced capabilities and services under the Act.⁹ As this Commission correctly determined, "the Act does not draw a regulatory distinction between voice and data services."¹⁰ Section 251 applies to the same ILEC infrastructure for voice and data services to which competitors need access in order to provide local service, be they including voice or advanced data services. In addition, consumers and service providers make no such distinction. There is a single local service market that includes both traditional and advanced services. Many traditional local services are often substitutes for the latter, and vice versa. The ILECs are not seeking to enter a market in which they do not compete and in which they are no different from other providers. To the contrary, they are seeking to provide additional services in the local market that they currently monopolize, and in which competing providers depend on ILECs for reasonable and nondiscriminatory access to unbundled network elements, interconnection and services for resale.

Continued enforcement of section 251 is necessary to prevent the ILECs from extending their current monopoly to the provision of advanced data services. As several commenters demonstrated, the ILECs continue to hold a bottleneck over essential facilities that are necessary to provide advanced services.¹¹ Unlike CLECs, cable operators, wireless and other service providers, the ILECs

⁹ Ameritech Comments at 6-7 (arguing that ILECs are not dominant because private networks are available); Bell Atlantic Comments at 5-7 (arguing that Bell Atlantic is only one of several new competitors and that cable companies are the incumbent providers of high-speed service to residential customers); USTA Comments at 3 (arguing that the market for data and Internet services is already competitive so no Commission regulations are required).

¹⁰ Order, ¶ 47.

¹¹ Comments of Sprint Corporation at 2 (Sprint Comments); Comments of Qwest Communications Corporation at 17 (Qwest Comments); Comments of AT&T Corp. at 9 (AT&T

have facilities that extend to virtually every household and business in the country. ILECs have two cost advantages that inhibit competition. First, they have achieved some economies of scale, and as the Commission has stated, section 251(c) requires them to share those economies with new entrants so that new entrants can achieve the same scale sooner and competition develop faster. Second, ILECs artificially raise their rivals' costs by failing to provide unbundle network elements and collocation space at cost-based rates and on otherwise reasonable and nondiscriminatory terms. CLECs, on the other hand, cannot obtain xDSL-capable loops at cost-based rates using efficient operations support systems.

Other service providers face local entry requirements or obstacles as well. Cable operators and wireless providers must still upgrade their networks for two-way capability. Further, most of the broadband access satellite systems are based on still evolving proprietary technologies, the cost, capacity, and reliability of which remains to be proven.

The fact of the matter is that no other segment of the telecommunications industry possesses networks as ubiquitous as the ILECs.' When it enacted the 1996 Act, Congress acknowledged this fact and consequently, the ILECs' significant advantage over their competitors. The ILECs' copper loops are critical for CLECs' provision of advanced telecommunications services.¹² ILECs have both the incentive and the ability to prevent and deter competitive entry by making access to unbundled local loops, equipment and collocation space a costly and cumbersome process. Indeed, many competitors pointed out that the ILECs are the primary reason that advanced capabilities and services

Comments); Comments of the Commercial Internet eXchange Association at 14; Comments of PSINet, Inc. at 10 (PSINet Comments).

¹² See, e.g., Comments of Transwire Communications, Inc. at 16 (Transwire Comments); Comments of the Coalition of Utah Independent Internet Service Providers at 2; Comments of MindSpring Enterprises, Inc. at 16.

are not being deployed faster.¹³ As reflected in the record, competitors are actively deploying advanced capabilities and services, but are continually faced with persistent ILEC intransigence.¹⁴ The chief problems, as we have stated many times, involve CLEC access to unbundled local loops, equipment and collocation space.¹⁵

MCI WorldCom therefore joins other commenters who advise the Commission to continue enforcement of section 251 and remain wary of ILEC promises to deploy advanced capabilities in exchange for regulatory forbearance from their section 251 obligations. Indeed, one of the principal constraints on deployment has been ILEC delays while they seek regulatory relief. For example, despite the fact that the Commission has denied the BOCs' requests for relief, some continue to challenge the enforcement obligations by filing petitions for reconsideration of the Commission's Order.¹⁶ Regulatory forbearance will mean ILEC deployment of advanced capabilities at their own pace, and at monopoly rates. The Commission should remain focused on opening the local market and ensuring competitive entry into the market. Only competition will spur the deployment of advanced capabilities and services on a widespread basis to provide greater consumer choice at lower

¹³ Comments of e.spire at 8-9; AT&T Comments at 26; Comments of New Networks Institute at 4; Comments of DSL Access Telecommunications Alliance at 5; Comments of Retail Internet Service Providers at 6; Transwire Comments at 14-15.

¹⁴ Sprint Comments at 5-6; Qwest Comments at 6-9; Comments of the Telecommunications Resellers Association at 14; Comments of Level 3 Communications, Inc. At 8; AT&T Comments at 34.

¹⁵ Sprint Comments at 2; Qwest Comments at 3; AT&T Comments at 26; Comments of DSL Telecommunications Alliance at 9.

¹⁶ See, Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification, CC Dkt. Nos. 98-147 et al., (filed Sept. 8, 1998); Petition for Reconsideration of SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, CC Dkt. Nos. 98-147, et al., (filed Sept. 8, 1998).

rates.

III. THERE IS NO SHORTAGE OF LONG DISTANCE INTERNET BACKBONE CAPACITY

In efforts to justify forbearance of section 271 in-region, interLATA restrictions, some of the BOCs continue their futile attempts to convince the Commission that there is a shortage of capacity for interLATA backbone services.¹⁷ Contrary to the BOCs' claim, there is no shortage of investment in interLATA backbone capacity, or of companies with the ability to raise money to invest in such capacity. Supply by the industry is generally keeping up with demand, even though demand is growing at rates that are extraordinary and hard to predict. The parties generally agree that the real issue is not whether to allow the BOCs to build Internet backbones across interLATA boundaries, but how to open the BOCs' (and more generally, the ILECs') local markets to competition. As several parties, including MCI WorldCom pointed out, the 1996 Act requires the Commission to focus its efforts on facilitating local competition and allowing the requirements of sections 251 and 271 to be fully implemented before granting the BOCs any interLATA relief.¹⁸

As MCI WorldCom asserted in its Comments, there are approximately 40 providers of national Internet backbone services in the United States alone.¹⁹ Current providers -- which include both national interexchange carriers and a variety of other companies that both own and lease interexchange capacity -- have been generally successful in acquiring the necessary capacity to keep pace with demand. These providers include rural ILECs. As the Rural Telecommunications Group

¹⁷ Comments of Bell Atlantic at 31; Comments of U S West at 32; Comments of Ameritech at 11.

¹⁸ e.spire Comments at 8; Sprint Comments at 8; Comments of the Association for Local Telecommunications Services at 13.

¹⁹ Boardwatch Magazine, *Directory of Internet Service Providers*, Winter, 1998.

stated, there is no reason to expect a shortage of backbone facilities capable of supporting Internet-related and advanced services in rural areas.²⁰ Indeed, some rural ILECs have combined their resources to construct backbone facilities.²¹ The record clearly substantiates that there is therefore no need for BOC deployment of an in-region, interLATA backbone to resolve any alleged congestion on the Internet. The BOCs have no advantage over any other provider of interLATA backbone capacity, unless they engage in discrimination or cross-subsidy. If investment is profitable for the BOCs, it is profitable for companies other than the BOCs as well. If the BOCs were granted forbearance of section 271, they would be able to use their bottleneck control over the local loop to undermine competition for all local services. MCI WorldCom therefore urges the Commission to strictly enforce the requirements of section 271.

In addition, because there are numerous suppliers of interLATA backbone capacity, there is no reason for the Commission to regulate peering arrangements.²² Large and small entities operating Internet backbone facilities have negotiated voluntary, mutually acceptable agreements for the exchange of traffic. As long as the market remains competitive, with continued low barriers to entry, regulatory intervention would be unnecessary. Furthermore, as America Online pointed out, regulatory oversight would add unnecessary costs to services of ISPs and backbone providers without any corresponding public benefit.²³ Consistent with Congress's and the Commission's goal of leaving the Internet free and unfettered from regulation, and its attendant costs, the Commission

²⁰ Comments of the Rural Telecommunications Group at 12.

²¹ *Id.*

²² See e.g., Comments of America Online at 13 (AOL Comments); Comments of the Internet Service Providers' Consortium at 15-16.

²³ AOL Comments at 14.

intervention is unnecessary with respect to peering arrangements.

CONCLUSION

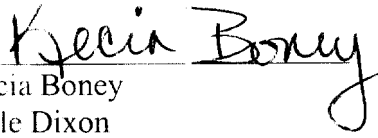
The parties have amply demonstrated that the problem is not with deployment of advanced capabilities and services in the interLATA arena, but in the local market. Consistent with this record, the Commission must strictly enforce section 251's unbundling, pricing interconnection, collocation and resale requirements and take any other appropriate measures to promote competition in the local market.

Respectfully submitted,

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Dated: October 8, 1998

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that I have on this eighth day of October, 1998 served by first-class United States mail, postage paid, a true copy of the forgoing Reply Comments, upon the following:

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